



TO: Professional Practice Committee

FROM: Sarah S. Benson *Sarah S. Benson*

SUBJECT: Proposed Amendment of Section 29.2 of the Rules of the Board of Regents and Addition of Subpart 79-21 to the Regulations of the Commissioner of Education Relating to the General Misconduct Provisions for the Health Professions and Requirements for Histotechnologist Licensure

DATE: January 8, 2023

AUTHORIZATION(S): *Donna J. Belmont*

SUMMARY

Issue for Decision

Should the Board of Regents adopt the proposed amendment of section 29.2 of the Rules of the Board of Regents and addition of subpart 79-21 to the Regulations of the Commissioner of Education relating to the general misconduct provisions for the health professions and requirements for histotechnologist licensure?

Reason for Consideration

Review of policy and required by State statute (Section 10 of Chapter 446 of the Laws of 2022).

Proposed Handling

The proposed amendment will be presented to the Professional Practice Committee for discussion and recommendation to the Full Board for adoption as an emergency action at the January 2024 meeting. A copy of the proposed rule (Attachment A) and a statement of facts and circumstances justifying the emergency action (Attachment B) are attached.

Procedural History

A Notice of Emergency Adoption and Proposed Rule Making will be published in the State Register on January 24, 2024, for a 60-day public comment period. Supporting materials for the proposed rule are available upon request from the Secretary to the Board of Regents.

Background Information

Clinical laboratory technology practitioners provide laboratory services that are necessary for the diagnosis, treatment, and monitoring of diseases and other health conditions. Clinical laboratories in New York have had great difficulty in recruiting and retaining staff due to a chronic workforce shortage of clinical laboratory practitioners. This workforce shortage was further exacerbated by the COVID-19 pandemic. To address the long-term clinical laboratory practitioners' workforce shortage in New York, Chapter 446 of the Laws of 2022 (Chapter 446) was enacted to improve access to needed medical laboratory services. This proposed amendment implements the new histotechnologist profession, effective January 21, 2024.¹

Proposed Amendment

The proposed addition of Subpart 79-21 to the Commissioner's regulations implements Chapter 446 by:

- establishing professional study and alternatives to professional study for licensure as a histotechnologist;
- establishing histotechnologist licensing examination requirements; and
- establishing the limited permit requirements to allow an applicant for licensure, who meets specified requirements, including, but not limited to, supervision requirements, to practice as a histotechnologist.

Additionally, the proposed amendment to subdivision (a) of section 29.2 of the Regents Rules adds the following clinical laboratory professions to the general misconduct provisions for health professions: (1) clinical laboratory technician; (2) clinical laboratory technologist; (3) cytotechnologist; (4) histotechnician; and (5) histotechnologist, to explicitly make these professions subject to such provisions.

Related Regents Items

April 2023: [Proposed Amendment to the Title of Subpart 79-16 and Sections 79-13.1, 79-13.3, 79-13.6, 79-14.1, 79-14.3, 79-15.1, 79-15.3, 79-16.1, 79-16.2, 79-16.3, 79-16.4 and 79-16.5 of the Regulations of the Commissioner of Education Relating to Licensure as a Clinical Laboratory Technologist or Cytotechnologist and Certification as a Clinical Laboratory Technician or Histological Technician](#)

(<https://www.regents.nysed.gov/sites/regents/files/423ppca2.pdf>)

¹ Section 10 of Chapter 446, which establishes the licensure requirements for the new histotechnologist profession, is effective January 21, 2024. However, the other provisions of Chapter 446 that provide additional flexibility to license additional qualified individuals as clinical laboratory practitioners became effective January 17, 2023. The implementing regulatory amendments for these provisions have been previously brought before the Board and permanently adopted.

Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That section 29.2 of the Rules of the Board of Regents be amended, as submitted, and subpart 79-21 of the Regulations of the Commissioner of Education be added, as submitted, effective January 21, 2024, as an emergency action, upon the finding by the Board of Regents that such action is necessary for the preservation of the public health and general welfare in order to timely implement the provisions of section 10 of Chapter 446 of the Laws of 2022, effective January 21, 2024, and to immediately clarify that clinical laboratory technology professions are subject to the general misconduct provisions for health professions.

Timetable for Implementation

If adopted as an emergency rule at the January 2024 Regents meeting, the emergency rule will become effective January 21, 2024. It is anticipated that the proposed amendment will be presented to the Board of Regents for permanent adoption at the May 2024 Regents meeting, after publication in the State Register and the expiration of the 60-day public comment period required under the State Administrative Procedures Act. Because the emergency action will expire before the May 2024 Regents meeting, it is anticipated that an additional emergency action will be presented at the March 2024 meeting. If adopted at the May meeting, the proposed rule will become effective as a permanent rule on May 22, 2024.

Attachment A

AMENDMENT TO THE RULES OF THE BOARD OF REGENTS AND THE
REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 210, 212, 6501, 6504, 6507, 6508, 8601, 8603, 8606-b, and 8608 of the Education Law and Chapter 446 of the Laws of 2022.

1. Subdivision (a) of section 29.2 of the Rules of the Board of Regents is amended to read as follows:

Section 29.2. General provisions for health professions

(a) Unprofessional conduct shall also include, in the professions of: acupuncture, athletic training, audiology, certified behavior analyst assistant, registered dental assisting, chiropractic, clinical laboratory technician, clinical laboratory technologist, creative arts therapy, cytotechnologist, dental hygiene, dentistry, dietetics/nutrition, histotechnician, histotechnologist, licensed behavior analyst, licensed pathologists' assistants, licensed perfusionist, licensed practical nursing, marriage and family therapy, massage therapy, medicine, mental health counseling, midwifery, occupational therapy, occupational therapy assistant, ophthalmic dispensing, optometry, pharmacy, physical therapist assistant, physical therapy, physician assistant, podiatry, psychoanalysis, psychology, registered pharmacy technicians, registered professional nursing, respiratory therapy, respiratory therapy technician, social work, specialist assistant, speech-language pathology (except for cases involving those professions licensed, certified or registered pursuant to the provisions of article 131 or 131-B of the Education Law in which a statement of charges of professional misconduct was not served on or before July 26, 1991, the effective date of chapter 606 of the Laws of 1991):

2. The Regulations of the Commissioner of Education is amended by adding a new Subpart 79-21 to read as follows:

Subpart 79-21. Histotechnologist

Section 79-21.1 Professional study and alternatives to professional study for histotechnologist licensure

To meet the professional education or alternative to professional education requirements for licensure as a histotechnologist, the applicant shall present satisfactory evidence of:

(a) successful completion of a bachelor's or higher degree program in histotechnology registered by the department or determined by the department to be the substantial equivalent, or a bachelor's degree histotechnology program accredited by a national accrediting organization acceptable to the department; or

(b) successful completion of a bachelor's degree program in a natural science or a laboratory science and a minimum number of credit hours acceptable to the department, and appropriate clinical education in a histotechnologist program accredited by a national accrediting organization acceptable to the department or a program registered by the department or determined by the department to be the substantial equivalent; or

(c) current histotechnologist certification by a national certification organization acceptable to the department; or

(d) histotechnologist licensure in a jurisdiction acceptable to the department; or,

(e) a bachelor's degree in a natural science or in a clinical laboratory science and coursework acceptable to the department and:

(1) two years' experience in a clinical laboratory while licensed as a histotechnician in New York or another jurisdiction acceptable to the department; or

(2) two years' experience in a clinical laboratory while certified as a histotechnician by a national certification organization, acceptable to the department.

79-21.2 Licensing examination

To meet the examination requirement for licensure as a histotechnologist, the candidate shall pass a general examination for histotechnologists that is determined by the department to measure the applicant's knowledge, judgment, and skills concerning practice as a histotechnologist, as defined in section 8601(2)(c) of the Education Law, and to be offered by an organization that has satisfactory administrative and psychometric procedures in place to offer the examination.

79-21.3 Limited permits

(a) As authorized by section 8608 of the Education Law, upon recommendation of the State Board for Clinical Laboratory Technology, the department may issue a limited permit to practice as a histotechnologist to an applicant for licensure who meets the requirements of this section.

(b) The applicant for a limited permit to practice as a histotechnologist shall:

(1) file an application for a histotechnologist license and a limited permit with the department and pay the initial licensure and registration fee, as prescribed in section 8605(1) of the Education Law, and a limited permit fee as prescribed in section 8698(1) of the Education Law;

(2) have met all requirements for licensure as a histotechnologist, except the examination requirement; and,

(3) submit adequate documentation that the applicant will be under the general supervision of the director of a clinical laboratory in accordance with section 571 of the Public Health Law, and in accordance with the requirements of this paragraph.

(i) Such documentation shall identify the director of the clinical laboratory who has responsibility for providing general supervision of the applicant's work while under the limited permit and include a signed statement by the director of the clinical laboratory certifying that they will provide general supervision of the applicant's experience. If a director cannot carry out their duties, or is replaced by a new or interim director, the limited permit holder shall submit to the department on a form prescribed by the department the name of the new director who has assumed supervisory responsibility of the permit holder.

(ii) For purposes of this section, under the general supervision of the director of a clinical laboratory shall mean that the permit holder shall be supervised by a director of a clinical laboratory who;

(a) serves the laboratory full-time, or on a regular part-time basis;

(b) ensures the supervision of the technical performance of the permit holder, and be readily available for consultation with the permit holder, as needed; and,

(c) is responsible for the performance of laboratory procedures and related services carried out by the limited permit holder, either by directly overseeing such testing, or by delegating this responsibility to authorized qualified supervisors who are on site within the laboratory.

(c) The limited permit issued pursuant to this section shall be valid for a period of not more than twenty-four months from the date of issuance and shall not be renewable.

STATEMENT OF FACTS AND CIRCUMSTANCES
WHICH NECESSITATE EMERGENCY ACTION

Chapter 446 of the Laws of 2022 (Chapter 446) was enacted to alleviate New York's clinical laboratory workforce shortage by providing more flexibility to license additional qualified individuals as clinical laboratory practitioners and establishing the new histotechnology profession, thereby improving access to clinical laboratory services that are necessary for the diagnosis, treatment and monitoring of health conditions. The proposed rule changes are necessary to implement Section 10 of Chapter 446, which effective January 21, 2024, amends the Education Law by establishing the new histotechnology profession and the licensure requirements for it.

The proposed addition of subpart 79-21 to the Commissioner's regulations implements Chapter 446 by establishing:

- professional study and alternatives to professional study for histotechnologist licensure;
- histotechnologist licensing examination requirements; and
- the limited permit requirements to allow an applicant for licensure, who meets specified requirements, including, but not limited to, supervision requirements, to practice as a histotechnologist.

Additionally, the proposed rule amends section 29.2 of the Rules of the Board of Regents to clarify that all clinical laboratory technology practitioners, including histotechnologists, are subject to general provisions misconduct rules for the health provisions.

Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for permanent adoption, after expiration of the required 60-day

comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the May 2024 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earliest effective date of the proposed rule, if adopted at the May meeting would be May 22, 2024 the date the Notice of Adoption would be published in the State Register.

Therefore, emergency action is necessary at the January 2024 meeting for the preservation of the public health and general welfare in order to timely implement the provisions of section 10 of Chapter 446 of the Laws of 2022, effective January 21, 2024, and to immediately clarify that clinical laboratory technology professions are subject to the general misconduct provisions for health professions.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the May 2024 Regents meeting, which is the first scheduled meeting after the 60-day public comment period prescribed in SAPA for State agency rule makings. However, since the emergency regulation will expire before the May Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the March 2024 Regents meeting